



POLICE DEPARTMENT

April 30, 2013

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Peter Griffith
Tax Registry No. 919131
109 Precinct
Disciplinary Case No. 2011 3646

The above-named member of the Department appeared before me on February 14, 2013, charged with the following:

1. Said Police Officer Peter Griffith, while assigned to the School Safety Division Uniform Task Force, while on duty on or about December 14, 2010, was discourteous to New York City Police Lieutenant Brian O'Sullivan during roll call, to wit: Said Police Officer Griffith continued to make comments after repeated requests by Lieutenant O'Sullivan that Police Officer Griffith remain silent.

P.G. 203-09, Page 1, Paragraph 2 GENERAL REGULATIONS

The Department was represented by Jamie Moran, Esq., Department Advocate's Office, and Respondent was represented by John Tynan, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty as charged.

SUMMARY OF EVIDENCE PRESENTEDIntroduction

It is not disputed that on December 14, 2010, Respondent was assigned to the School Safety Division (SSD) Uniform Task Force (the Task Force) and that he was on duty and present for roll call that day. About 20 police officers and supervisors, including Lieutenant Brian O'Sullivan, were present at roll call which was conducted in the 102 Precinct muster room. Sergeant Carolynn McMillan, who was the Task Force's training sergeant, asked the assembled group of officers if any of them had suggestions for training topics to be covered during training sessions that would be conducted during an upcoming week when the schools would be closed. Police Officer Ulysses Flores suggested that Task Force officers receive training regarding summonses.

The Department's Case

The Department called Sergeant Carolynn McMillan, Lieutenant Robert Dwojak, Police Officer Ulysses Flores and Lieutenant Brian O'Sullivan as witnesses.

Sergeant Carolynn McMillan

McMillan, a 19-year member of the Department who is currently assigned to SSD's Community Outreach Program, testified that after she asked for suggestions for training, Flores stated that he felt that they should go over summonses again. McMillan recalled that Respondent, who was standing in the first row of officers directly in front of McMillan, made an "Oh boy!" face and stated that they had gone over summonses numerous times and that if he did not know how to do them yet he never will know.

McMillan told Flores that she would get some training materials together regarding summonses. McMillan recalled that O'Sullivan interceded and stated that when the training regarding summonses was held, Respondent could be on a foot post. Respondent asked why he would have to do a foot post. O'Sullivan replied that they would deal with the situation after roll call and that "it's over." Respondent then stated, "It's not over." O'Sullivan repeated "it's over" and stated that he would speak to Respondent after roll call. At that point McMillan dismissed roll call and everyone fell out. McMillan recalled that O'Sullivan had stated "it's over" three times.

On cross-examination, McMillan agreed that Respondent did not move toward O'Sullivan while they were speaking to each other; that he remained in formation the entire time; that he did not make any gestures with his arms or point at O'Sullivan; and that he never raised his voice or used profane language. McMillan confirmed that Flores did not approach her afterwards to say he felt embarrassed or intimidated by what Respondent had said and none of the other officers at the roll call said anything to her about the incident.

Lieutenant Robert W. Dwojak

Dwojak, a 16-year member of the Department who is currently assigned to the 60 Precinct, was assigned to the Task Force from September 2004 until the end of December, 2011, when he held the rank of sergeant. Dwojak testified that he was present during the roll call when McMillan asked for input from the officers present regarding training topics. Dwojak recalled that after Flores stated that mistakes were being made in issuing summonses, Respondent made a comment that appeared to embarrass Flores. O'Sullivan stepped in and engaged in a verbal exchange with Respondent. Dwojak

confirmed that when he was questioned at his official Department interview two days after this incident, he had stated that O'Sullivan told Respondent "a couple of times" to stop speaking.

On cross-examination, Dwojak acknowledged that he could not presently recall what Respondent had specifically said and he confirmed that at his official Department interview he was also unable to recall what Respondent had said. Dwojak agreed that no one came up to him afterwards to complain about Respondent's comment.

Police Officer Ulysses Flores

Flores, a 15-year member of the Department who is still assigned to the Task Force, testified that since there had been a lot of confusion about how to fill out a summons, he had suggested to McMillan that they review summonses again. Respondent made a comment and Flores heard some giggling. O'Sullivan then spoke to Respondent, Respondent answered back, and O'Sullivan responded. Respondent then commented and O'Sullivan told him that was "enough." O'Sullivan then told Respondent to see him after roll call. Flores was standing right behind Respondent at roll call. Flores testified that Respondent's voice was a monotone when he addressed O'Sullivan but that O'Sullivan sounded agitated and said "enough" in a raised voice.

On cross-examination, Flores stated that he did not feel that Respondent was discourteous to him and he was not offended. Flores stated that he and Respondent joke around a lot.

Lieutenant Brian O'Sullivan

O'Sullivan, a 15-year member of the Department who is currently assigned to the Traffic Bureau, recalled that on December 14, 2010, he was conducting roll call with Sergeant Robinson. McMillan asked the officers if they had any suggestions for training topics to be covered at an upcoming training session that would be held while the schools were closed for winter recess. Flores stated he had an idea that he would like training on how to write summonses.

As Flores was explaining his idea, Respondent interrupted him and stated, "If you don't know how to write a summons by now, you're not going to know how to write a summons." O'Sullivan then stated, "Excuse me, you know, if you don't have an idea then, you know, just let it go." When McMillan again asked if anyone had any other training ideas, Respondent repeated, "If you don't know how to write a summons by now, you are not going to know." O'Sullivan interjected again and said, "All right, enough. If you don't have a training idea, we don't need your opinion."

O'Sullivan then addressed Respondent directly and told him that if he already knew how to write a summons, then when summons training was conducted he could be assigned to a foot post. He stated that Respondent began flailing his arms, and replied in a raised voice that he was not afraid of a foot post, and he asked if O'Sullivan was trying to scare him. O'Sullivan told him, "That's enough, stop talking." Respondent stated, "You started it." O'Sullivan again told him to stop talking but Respondent kept repeating that he was not afraid of patrol. McMillan then interjected and told Respondent to be quiet and that it was "over."

Once Respondent stopped talking, O'Sullivan realized that the incident had disrupted roll call and he immediately told Respondent that he wanted to speak to him after roll call. O'Sullivan dismissed roll call. He spoke to Respondent afterwards.

On cross-examination, O'Sullivan confirmed that after roll call ended, he asked another officer where Respondent was and was told that he was downstairs. O'Sullivan told the officer to tell Respondent to come upstairs. O'Sullivan admitted that Flores did not come to him afterwards to complain about Respondent's remark. O'Sullivan stated that the entire verbal exchange with Respondent at roll call took less than one minute. O'Sullivan acknowledged that Respondent had properly addressed him by his rank, that Respondent had not used any profane language, and that he did not tell O'Sullivan to stop talking. O'Sullivan agreed that he was standing slightly to the side of the platoon during his verbal exchange with Respondent and that Respondent did not move out of his position in the roll call formation. O'Sullivan confirmed that Respondent was transferred out of the Task Force because of this incident.

On redirect, O'Sullivan reiterated that he had asked Respondent three separate times to stop talking.

Respondent's Case

Respondent called Police Officers Mark Brathwaite and Alix Cassagnol as witnesses and testified in his own behalf.

Police Officer Mark Brathwaite

Brathwaite, who is still assigned to the Task Force, recalled that at roll call on December 14, 2010, McMillan asked for training suggestions for the upcoming school break. When Flores suggested that they should go over C summonses, Brathwaite heard "some sighs" and then heard Respondent tell McMillan that he did not think training for C summonses was a good idea. Flores did not respond but O'Sullivan then asked Respondent if he was a "know-it-all." When Respondent replied that he was not a "know-it-all," a verbal exchange between the two men ensued and at one point O'Sullivan told Respondent that if he did not want to attend training he could be assigned to a foot post.

Brathwaite recalled that Respondent addressed O'Sullivan in a normal conversational tone but O'Sullivan spoke louder than Respondent. Respondent and O'Sullivan were about 15 feet away from each other. Respondent did not use any hand gestures or any derogatory words in addressing O'Sullivan during their brief conversation.

On cross-examination, Brathwaite confirmed that he could not presently recall everything that Respondent and O'Sullivan said to each other during their conversation.

Police Officer Alix Cassagnol

Cassagnol, who is currently assigned to the Counter-Terrorism Division, was assigned to the Task Force from 2004 through 2012 and attended roll call on December 14, 2010. Cassagnol recalled that before roll call commenced, McMillan asked for suggestions for training. When Flores suggested training regarding C summonses,

Respondent “shrugged” his shoulders. McMillan responded to his shrug by asking Respondent if he had anything to say. Respondent replied by stating that he did not think that they needed training on C summonses. O’Sullivan then interjected and told Respondent, “If you think you know it all, whenever everyone’s getting training, you can be on a foot post.” Respondent replied that he did not know it all. O’Sullivan told Respondent to see him after roll call.

Cassagnol recalled that Respondent’s voice tone and O’Sullivan’s voice tone were steady, not raised. The verbal exchange between Respondent and O’Sullivan lasted only seconds.

Respondent

Respondent, a 16-year member of the Department who is currently assigned to the 109 Precinct, was assigned to the Task Force from 2007 to March, 2011. Respondent recalled that on December 14, 2010, Task Force officers and supervisors had assembled for roll call, but the formal roll call had not yet begun, when McMillan stood in front of the group and initiated an informal discussion by requesting suggestions for an upcoming block of training sessions that would be held when the schools were closed. O’Sullivan was standing on the far side.

When Flores suggested that they receive summons training to cover the block of training, Respondent heard “collective sighs” emanating from the assembled officers, but no one said anything. Respondent, who as of December, 2010 had personally written at least two hundred summonses and had received training from SSD regarding issuing summonses, raised his hand with his index finger pointed upwards. After McMillan acknowledged Respondent’s raised hand, he stated that he did not think the summons

training was going to be enough to fill the training period. McMillan replied that they could have other training also and that the block of training need not be limited to just summons training.

O'Sullivan then interjected and addressed Respondent directly by asking him, "You think you know everything Griff?" Respondent described O'Sullivan's tone as condescending. Respondent was shocked and disappointed by O'Sullivan's question. Respondent replied that he did not think that he knew everything and he reiterated his opinion that summons training alone was insufficient to cover the whole block of training. Respondent asserted that he made this statement in a conversational tone. O'Sullivan then told him that while everyone else was in training, Respondent would be on a foot post. O'Sullivan said this in a loud voice and appeared to be agitated and upset. When no one else in the roll call said anything, Respondent, speaking in a monotone voice, repeated that summons training was not enough to cover the whole training. O'Sullivan started yelling and said "that's it" and "enough." Respondent testified that he had no recollection that anything else was said after that. At no point during his conversation with O'Sullivan did Respondent raise his hands or move his arms towards him. Robinson then took over roll call and gave out assignments.

Respondent was told to see O'Sullivan after roll call. Respondent decided to find his union delegate since he knew that O'Sullivan was upset, and he wanted a union representative to be present when he met with O'Sullivan. However, Respondent was unable to find his union delegate. O'Sullivan sent word through another officer that he wanted Respondent to come see him immediately. Respondent complied and they had a

discussion. Respondent later overheard McMillan say to someone that Respondent had done nothing wrong and that perhaps O'Sullivan was having a bad day.

Respondent was transferred from the Task Force to the 109 Precinct in March, 2011. During the three month period between December 14, 2010 and the date he was transferred, Respondent had very little contact with O'Sullivan.

On cross examination, Respondent agreed that he did not offer McMillan a suggestion for training. Respondent also agreed that O'Sullivan had the authority to assign Respondent any legitimate assignment, and that a foot post was a legitimate assignment while schools were on break. Respondent asserted that O'Sullivan had been disrespectful, rude and discourteous to him.

FINDINGS AND ANALYSIS

It is charged that Respondent was discourteous to Lieutenant O'Sullivan during roll call in that he continued to make comments after O'Sullivan repeatedly requested that he remain silent.

Respondent does not dispute that after Officer Flores suggested that Task Force officers receive training regarding summonses, he voiced his opinion regarding Flores' suggestion. Respondent also does not dispute that after O'Sullivan made a comment about his opinion, he repeated his opinion. Respondent further does not dispute that even though it was clear to him that O'Sullivan had become upset with him, he voiced his opinion a third time. Finally, Respondent does not dispute that O'Sullivan told him "Enough."

Although Respondent asserted that he said nothing about performing a foot post after O'Sullivan stated that while everyone else was in training he would be assigned to a foot post, O'Sullivan's assertion that Respondent stated that he was not afraid of a foot post is supported by McMillan's testimony that Respondent had replied to O'Sullivan's remark by asking why he would have to be assigned to a foot post.

Most significantly, although Respondent asserted that he stopped talking after O'Sullivan stated "enough," I credit McMillan's testimony that when O'Sullivan said "it's over," Respondent stated "It's not over," and that O'Sullivan had to repeat "it's over" two more times. McMillan's testimony is corroborated by Dwojak's statement at his official Department interview, conducted two days after this incident, that O'Sullivan had to tell Respondent "a couple of times" to stop speaking.

Respondent asserted that it was O'Sullivan, not him, who had been disrespectful, rude and discourteous by loudly calling Respondent a know-it-all and by stating that when everyone else was receiving summons training he would be walking a foot post. Even if O'Sullivan did speak to Respondent in a loud and insulting manner, Respondent was not permitted to engage in a verbal argument with O'Sullivan and he had no right to ignore O'Sullivan's direction to stop talking.

Based on the above, I find that Respondent was discourteous to O'Sullivan in that he continued to make comments after O'Sullivan repeatedly requested that he stop talking.

Respondent is found Guilty as charged.

PENALTY

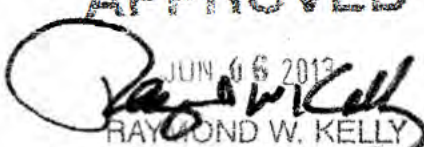
In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on April 15, 1997. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

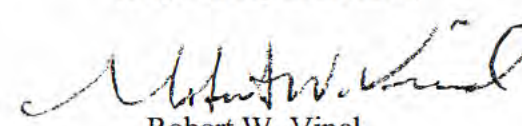
Respondent has been found Guilty of being discourteous to a lieutenant, in the presence of other officers and supervisors at roll call, in that he continued to make comments after the lieutenant had repeatedly told him to stop talking.

The Assistant Department Advocate recommended that Respondent forfeit ten vacation days as a penalty.

In *Case No. 2010-2021* (Feb. 19, 2013), a 15-year police officer with no prior disciplinary record forfeited ten vacation days after he was found guilty at trial of being discourteous to a supervisor in the roll call room in front of other officers. In that case, as here, the officer did not utter any profanity, but the manner in which he addressed the supervisor constituted discourteous conduct.

It is recommended that Respondent forfeit ten vacation days.

APPROVED
JUN 06 2013

RAYMOND W. KELLY
POLICE COMMISSIONER

Respectfully submitted,

Robert W. Vinal
Assistant Deputy Commissioner – Trials

POLICE DEPARTMENT
CITY OF NEW YORK

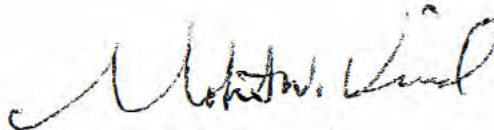
From: Assistant Deputy Commissioner - Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER PETER GRIFFITH
TAX REGISTRY NO. 919131
DISCIPLINARY CASE NO. 2011-3646

Respondent received an overall rating of 4.0 on his 2012 performance evaluation, 3.5 on his 2011 evaluation, and 3.5 on his 2010 evaluation. He has no medals. [REDACTED] he has no formal disciplinary record and he has no monitoring records.

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner Trials